



# STATE OF HAWAII

## DIVISION OF STATE PARKS Board of Land and Natural Resources SEALED BID PROPOSALS

To

Provide a full service Restaurant Concession in  
Building "B" at Wailua Marina River State Park,  
Wailua, Kauai, Hawaii

WILL BE RECEIVED UP TO AND OPENED AT 2:00 P.M. (HST) ON

**MARCH 28, 2005**

IN THE STATE PARKS DIVISION OFFICE, KALANIMOKU BUILDING, 1151 PUNCHBOWL STREET, ROOM  
310, HONOLULU, HAWAII 96813. DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO  
JIM SPRINGER, TELEPHONE (808) 587-0296, FACSIMILE (808) 587-0311 OR E-MAIL AT  
[JIM.B.SPRINGER@HAWAII.GOV](mailto:JIM.B.SPRINGER@HAWAII.GOV).

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Peter T. Young, Chairperson  
Department of Land & Natural Resources

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Name of Company

# **WAILUA MARINA RIVER STATE PARK, KAUAI**

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# GENERAL INSTRUCTIONS TO BIDDERS

## FOR RESTAURANT CONCESSION AT WAILUA RIVER STATE PARK KAPAA, KAUAI, HAWAII

### SECTION 1. QUALIFICATION OF BIDDERS

The Notice of Intention to Bid, attached hereto shall be filed by each prospective bidder with the Department of Land and Natural Resources, Division of State Parks, on or before 2:00 P.M. **March 7, 2005**.

Each bidder shall file a current Certificate of Compliance issued by the Hawaii State Department of Labor, a Certificate of Good Standing issued by the State of Hawaii, Department of Commerce and Consumer Affairs and current State of Hawaii, Department of Taxation, and federal Tax Clearance, together with the Notice of Intention to Bid, the Qualification Questionnaire attached hereto answered in full and sworn to before a notary, providing evidence that the applicant or its manager has the following minimum qualifications:

- a. Three (3) years full-time experience in operating a full service restaurant, or food service business whose business operates 365 days per year;
- b. Gross income of not less than \$700,000 a year within any two of the three immediately preceding calendar years from operating a full service restaurant, or food services business;
- c. Evidence of ability to provide a minimum of \$50,000 in liquid working capital or a firm commitment from a financial institution doing business in the State of Hawaii to provide working capital of \$50,000.
- d. Evidence of ability to provide a minimum of FOUR HUNDRED THOUSAND DOLLARS (\$400,000) in cash to be set aside in an escrow account or a firm commitment from a financial institution doing business in the State of Hawaii in the amount of FOUR HUNDRED THOUSAND DOLLARS (\$400,000); that said

funds shall be specifically used for the renovation and construction of the Restaurant Concession (Building "B") interior tenant improvements.

Each bidder grants the State the right to investigate its financial status, experience, and records of each bidder, and understands the State may require additional evidence and information from any bidder. Should a bidder fail to meet the qualifications stated herein after being offered an opportunity to be heard or fail to duly submit the required Notice of Intention to Bid, the Board of Land and Natural Resources (hereafter "BOARD") shall refuse to receive or consider any bid submitted by that bidder.

## SECTION 2. FILING OF BID PROPOSALS

A bid proposal shall be submitted on or before 2:00 P.M. **March 28, 2005** on the official form furnished by the Board.

The BOARD shall reject all bids submitted on a form other than the official bid proposal form or on any form which modifies, adds, or deletes any term, consideration, or condition, other than those contemplated by the Notice of Intent to Bid, the Bid Proposal Form, the General Instructions to Bidders, Specifications and the Concession Contract.

Bid proposals shall be signed in ink by the person or persons duly authorized to sign and bid on behalf of the bidder in the space provided on the bid proposal form. In case of a corporation, the title or titles of the officer or officers signing shall be stated, the corporate seal affixed, and evidence of the authority of the officers signing the bid proposal to bind the corporation shall be attached thereto.

The bid proposals shall be sealed in an envelope. On the envelope shall be written the subject matter of the bid, and the name of the bidder.

A bidder shall not submit more than one bid. If a bidder submits more than one bid, all bids submitted by that bidder shall be rejected. For the purposes hereof, a bidder shall be considered to have submitted more than one bid if:

- a. An individual submits more than one bid either in its own name or through an agent;
- b. An individual or legal entity submits a bid in its own name and a joint venture, partnership, or corporation, owned directly or indirectly by the individual, or entity to the extent of more than 25% also submits a bid;
- c. A joint venture, partnership, or corporation in which a person owns directly or indirectly more than a 25% interest in the joint venture, partnership, or corporation submits a bid and another joint venture, partnership, or corporation which that person also owns directly or indirectly more than a 25% interest, also bids.

If there is a reasonable ground to believe that collusion exists among two or more bidders, all of the bids of the parties to the collusion shall be rejected, and the parties to the collusion shall be prohibited from bidding on future contracts of the Department of Land and Natural Resources.

### SECTION 3. DEPOSIT ACCOMPANYING BID PROPOSAL

All bid proposals shall be accompanied by a deposit of legal tender, or by a certified or cashier's check drawn on a bank doing business in the State of Hawaii, payable at sight to the Department of Land and Natural Resources or by a surety bond approved by the BOARD in an amount not less than \$2,500.00, when the bid exceeds \$50,000 (the total minimum annual guaranteed rent bid submitted), plus two percent (2%) of the amount in excess of \$50,000.

If the bidder to whom the contract for the concession is awarded fails or neglects to enter into the concession lease and furnish satisfactory security as required by paragraphs 27 and 41 and proof of the insurance as required under paragraphs 44 and 45 of the concession lease within ten (10) days after receiving the concession lease document from the State or within such further time the BOARD may allow the bidder's bid deposit may be forfeited into the State treasury to the credit of the general fund.

If the contract is entered into and the security is furnished within the required time, the

deposit of legal tender, certified check, cashier's check, or surety bond shall be returned to the successful bidder. The deposit of legal tender, certified check, cashier's check or surety bond of each of the unsuccessful bidders shall be returned either after the contract is entered into or, if the contract is not awarded or entered into, after the BOARD makes a determination to reject all bids and publish another call for bids or upon the expiration of sixty (60) days after the bid opening, whichever occurs first.

Whenever a surety bond is employed, it shall be executed to the BOARD as obligee, by the bidder as principal. The surety shall be a corporation organized and authorized under the laws of the United States or of the State of Hawaii to act a surety on bonds and doing business in the State of Hawaii under the provision of the laws of the United States or of the State of Hawaii. The surety bond shall be conditioned upon the bidder entering into the concession lease and furnishing satisfactory security as required by Paragraphs 27 and 41 and proof of the insurance as required under Paragraphs 44 and 45 of the concession lease within ten (10) days after receiving the contract documents from the State or within such further time as the BOARD may allow.

#### SECTION 4. BID UPSET

Each bidder shall submit its bid as follows:

(a) Minimum Annual Rent Guarantee. The dollar amount it proposes to pay as the initial minimum annual rent guarantee, which amount shall not be less than TWENTY EIGHT THOUSAND DOLLARS (\$28,000.00)

(b) Percentage Rental. The minimum percentage of its annual gross sales receipts it proposes to pay as percentage rental; 1) The minimum percentage rent to be paid from restaurant food and beverage sales (exclude alcoholic beverages) to be no less than Five percent (5%) of the annual gross sales receipts; 2) The minimum percentage rent to be paid from alcoholic beverage sales to be no less than Ten percent (10%) of the annual gross sales receipts; 3) The minimum percentage rent to be paid from retail and other services (such as but

not limited to e-commerce) to be no less than Eight percent (8%) of the annual gross sales receipts. Percentage shall be limited to two digits to the right of the decimal point; for example, 5.01%.

## SECTION 5. BID OPENING AND AWARD OF CONCESSION LEASE

All bids shall be publicly opened at the Division of State Parks Office, Room 310, Kalanimoku Building, 1151 Punchbowl Street, Honolulu, HI at 2:00 P.M. **March 28, 2005**. The BOARD reserves the right to reject any or all bids, or waive any defects when, in its opinion, the rejection or waiver will be in the best interest of the State.

The award of the concession lease for the concession shall be made to the responsible bidder proposing to pay the highest minimum annual rent guarantee.

In case of a tie in the minimum annual guarantee rental bid, the bidder proposing to pay the highest percentage rental shall be awarded the concession lease.

Written notice of the award shall be given to successful bidder and the lease shall commence as of the date specified in the notice which date shall be not more than ninety (90) days from the date of the award.

## SECTION 6. EXECUTION OF CONCESSION LEASE

Within ten (10) days after receiving the contract document from the State, the successful bidder, hereinafter called "CONCESSIONAIRE", shall execute and submit to the BOARD the concession lease, together with the security required under the Paragraphs 27 and 41 and proof of the insurance required under Paragraphs 44 and 45 of the concession lease.

The State reserves the right to cancel the award of the concession lease at any time prior to the signing of the concession lease by the State.

## SECTION 7. COMMENCEMENT OF OPERATION

After the concession lease is awarded, the BOARD shall issue to the

CONCESSIONAIRE a written "Notice to Proceed" designating the official commencement date of the concession lease.

Should the CONCESSIONAIRE incur expenditures for materials, supplies, and equipment or for any installation work in advance of the official commencement date of the concession lease, those expenditures shall not obligate the State in any way.

#### SECTION 8. DISQUALIFICATION OF BIDDERS

Any one or more of the following causes will be considered as sufficient for the disqualification of a Bidder and the rejection of bidder's offer:

1. Lack of proper financial ability, equipment and/or sufficient experience to perform the work as revealed by the Qualification Questionnaire (Section 1, General Instructions to Bidders);
2. Evidence of collusion among Bidders;
3. Being in arrears in the payment of taxes, rent or other obligations owing the United States Government and the State of Hawaii, or having defaulted on a previous contract;
4. Receipt of more than one bid from an individual, firm, partnership, corporation, joint venture, or other legal entity under the same or different names (Section 2, General Instructions to Bidders);
5. Delivery of bids after the deadline specified for bid opening;
6. If the bid shows any erasures without initials, or additions to, or modifications of, or deletions of, any term, consideration or conditions provided in any of the documents;
7. If the bid shows irregularities or defects of any kind;
8. If the bid is conditional or incomplete;
9. If the Offer Form is unsigned by the Bidder;
10. If the Bidder or surety fails to sign the surety bond submitted as bid guaranty;



11. If the bid guaranty is received separately from the bid and is not identifiable as guaranty for a specific offer or is received after the date and time set of the opening; or,
12. If Bidder fails to use the Surety Bid Bond form furnished by the Division of State Parks or identical wording contained in the said form when submitting a surety bond as bid guaranty.

No bidder may withdraw or revise his bid proposal for a period of sixty (60) calendar days after the time fixed for bid opening.

#### SECTION 9. FAILURE TO EXECUTE CONCESSION LEASE

If the Offeror to whom a concession lease is awarded fails or neglects to enter into the contract and to furnish satisfactory security as required by Chapter 102, HRS, within ten days after award or within such further time as the Administrator may allow, the highest bidder shall pay the amount of bidder's bid guaranty into the State as a realization of the State. The Administrator may then award the concession lease to the next highest responsive, responsible bidder or may call for new offers.

#### SECTION 10. ASSUMPTION OF RISK

The Concessionaire and its employees and agents assume the risk of any loss or damage to their property left on the premises of the park. Neither the Board nor its officers, agents and employees shall be responsible or liable for any loss of, or damage to, the aforesaid property while on the premises or in the park, regardless of how or the manner in which any such loss or damage is sustained.

#### SECTION 11. ASSIGNMENTS

The Concessionaire shall not sublet the premises, subcontract, assign, hypothecate, mortgage or otherwise encumber the Concession lease or any or all of the Concessionaire's rights

thereunder, without prior written consent of the Board. Any transfer, assignment, subcontract, hypothecation or mortgage so made without such written consent shall be null and void and shall constitute sufficient cause to terminate the Concession lease.

#### SECTION 12. DAMAGE OR DESTRUCTION

In instances of damage or destruction or inoperativeness to the park or to any part thereof, the Board shall determine if such damage or destruction or inoperativeness is repairable. Under no circumstances shall the Board be obligated, under the terms of the Concession lease, to repair or reconstruct any damage or destruction or inoperativeness to the park complex.

If the Board elects to repair or reconstruct any portions of the park complex damaged or destroyed or inoperable, it shall determine the scope and schedule of the work to be done and shall proceed with the reconstruction or repairs. To the extent that such damage or destruction or inoperativeness is caused by the Concessionaire, it shall be liable to the Board for the cost of reconstruction and repairs; provided, that irrespective of the cause of any damage or destruction to the permanent improvements, equipment and trade fixtures constructed or installed in or on the concession premises by the Concessionaire, the Board reserves the right to determine the scope and schedule of the replacements or remedial work to be done and the Concessionaire shall have the duty to proceed with the replacements or repairs at its own cost and expense.

#### SECTION 13. DEATH OR TOTAL DISABILITY OF CONCESSIONAIRE

This section was intentionally omitted.

#### SECTION 14. BREACH OF CONCESSION LEASE, BANKRUPTCY, INSOLVENCY

In the event the Concessionaire shall fail to pay the rent when the same becomes due, whether the same shall or shall not have been legally demanded, or does not provide the services required herein, or shall fail in any other respect to faithfully observe or perform any condition or

covenant of the Concession lease and such non-performance is not excused as provided herein, or if the Concessionaire shall become bankrupt or insolvent, or if the Concessionaire should file a petition for dissolution, or file any debtor proceedings or take any proceedings of any kind or character whatsoever under any provisions of the Federal Bankruptcy Code seeking any readjustment, arrangement, postponement, composition or reduction of Concessionaire's debts, liabilities or obligations, or if any proceedings under the Federal Bankruptcy Code shall be taken against the Concessionaire and the same shall not be frivolous, or if the Concessionaire shall abandon the premises, or suffer the Contract or interest thereunder to be taken under any writ of execution, then the State may at once enter upon the premises or any part thereof in the name of the State, and at its option terminate the Concession lease and thereupon take possession of the premises, all permanent improvements and all equipment thereon and thereby become wholly vested with all right, title and interest of the Concessionaire and of those claiming under it, all without service of notice or resort to any legal process and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby, and without prejudice to any other remedy or right of action which the State may have for arrears of rent or for other or preceding breach of covenant of the Contract on the part of the Concessionaire to be observed or performed.

If the State terminates the Concession lease for cause, all costs and charges incurred by the State, together with all revenues due under the Contract, will be added to any money due or which would or might have become due from the Concessionaire had the Concessionaire been allowed to complete the work under the Concession lease. The Concessionaire and its surety shall be liable and shall pay to the Board all such sums which would have been payable to the State under the Concession lease.

#### SECTION 15. CONDEMNATION

In the event the whole of the premises or the park shall be taken pursuant to the power of eminent domain, or in the event any partial taking of the same shall render the premises or the park, or the remainder of the same, insufficient for the operation of the concession, the Concession lease shall terminate as of the date possession shall be taken by the condemn and any pre-paid but unearned rental shall be reimbursed to the Concessionaire; provided, that if only a portion of the premises or the state park shall be condemned without rendering the remainder thereof unsuitable for the operation of the concession, the minimum rent shall be reduced pro-rata as of the date possession is taken. All compensation and damages payable by reason of the condemnation of the premises shall be payable to the parties in accordance with the condemnation paragraph in the Concession Lease

#### SECTION 16. TERMINATION

This section was intentionally omitted.

#### SECTION 17. SURRENDER OF PREMISES UPON TERMINATION

The Concessionaire shall peaceably surrender and deliver to the Board possession of the premises, improvements and equipment thereupon on the date of cessation of the Concession lease, whether such cessation be by termination, expiration or otherwise, promptly and in good order, operating condition and repair, reasonable wear and tear resulting from Concessionaire's use of the premises.

Upon cessation of the Concession lease, the Concessionaire shall remove from the premises, under the supervision of the Parks Property Manager, its merchandise, removable equipment and other personal property in such a manner as to cause no damage to the premises or to the state park, and in the event of any such damage, the Concessionaire agrees, at its own cost and expense, to repair the same to the satisfaction of the Board.

If the Concessionaire fails or neglects to remove all or any portion of its merchandise, equipment and/or personal property within fifteen (15) calendar days after the cessation of the Concession lease, the Board, at its sole option, may either remove and/or dispose of the same and charge the cost of such removal and/or disposal to the Concessionaire, which cost the Concessionaire hereby agrees to pay, or the Board may consider the same to be abandoned and take title thereto in the name of the Board.

#### SECTION 18. NOTICES

Wherever required, notices to the Board shall be sufficient if sent by certified mail, postage prepaid, addressed to the Parks Property Manager, Division of State Parks, P.O.Box 621, Honolulu, HI. 96809 or to such other address as the Board may from time to time designate in writing; and notices to the Concessionaire shall likewise be sufficient if sent by certified mail, postage prepaid, to the Concessionaire at its address herein provided.

#### SECTION 19. INDEPENDENT CONCESSIONAIRE (LESSEE)

The Concessionaire is deemed to be an Independent Concessionaire and not the agent, employee, partner or joint venture of the Board. Services performed under the Concession lease shall not constitute nor be construed as employment with the Board. Furthermore, the Concessionaire intentionally, voluntarily and knowingly assumes the sole and entire liability (if any such liability is determined to exist) to its employees and agents or other persons for all loss, damage or injury caused by the Concessionaire, or Concessionaire's employees or agents in the course of their employment.

#### SECTION 20. COSTS OF ENFORCEMENT AND LITIGATION

In the event the Board shall, without any fault, be made a party to any litigation, other than condemnation or like proceedings, commenced by or against the Concessionaire arising out of

the Concessionaire's use or occupancy of the premises or attributable to any structure or objects placed thereupon or therein by the Concessionaire, then the Concessionaire shall pay all costs and reasonable attorneys' fees incurred by or imposed upon the Board in connection with such litigation. The Concessionaire shall also pay all costs and reasonable attorneys' fees which may be incurred or paid by the Board in enforcing the covenants and provisions of the Contract, including the cost of collection of delinquent rentals, taxes and other charges.

#### SECTION 21. AMENDMENTS

The Concession lease shall not be varied in its terms or conditions except by an instrument in writing executed subsequently hereto by both parties.

#### SECTION 22. NON-LIABILITY OF INDIVIDUALS

No officer or employee of the State of Hawaii, including the Board, shall be individually or personally liable to the Concessionaire under any terms or provisions of the Contract, or because of his execution or attempted execution of the Concession lease, or because of any breach, or attempted or alleged breach, thereof by the Board.

#### SECTION 23. LAWS TO BE OBSERVED

The Concessionaire shall observe, perform and comply or require compliance with all laws, ordinances, rules and regulations of the United States, the State of Hawaii, the County jurisdiction on that island, or any department or agency thereof, which in any manner affect the construction, operation and maintenance of the restaurant concession. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

#### SECTION 24. WAIVER OF VIOLATIONS

It is expressly understood and agreed that no waiver granted by the Board on account of any violation of any promise, term or condition of the Concession lease shall constitute or be

construed in any manner as a waiver of the promise, term or condition, or of the right to enforce the same as to any other or further violation.

#### SECTION 25. GOVERNING LAW

The Concession lease shall be construed and governed by the laws of the State of Hawaii and any litigation arising pursuant to the concession lease or bid documents shall be litigated only in a court of competent jurisdiction located in the State of Hawaii.

#### SECTION 26. APPROVALS

Any agreement arising out of this offer is subject to the approval of the Department of the Attorney General as to form, and to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

#### SECTION 27. RECORDS RETENTION

The Concessionaire and any sub-Concessionaires shall maintain the books and records that relate to the restaurant concession and any cost or pricing data for three (3) years from the date of final payment under the Agreement.

#### SECTION 28. NONDISCRIMINATION

No person performing work under this Agreement, including any sub-Concessionaire, employee, or agency of the Concessionaire, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

## NOTICE OF INTENTION TO BID

Date \_\_\_\_\_

Administrator  
State Parks Division  
1151 Punchbowl Street, Room 310  
Honolulu, Hawaii 96813

The undersigned intends to bid for the following park location in providing a full service Restaurant at Wailua Marina River State Park for the Board of Land and Natural Resources:

Attached is the fully completed QUALIFICATION QUESTIONNAIRE to be submitted with the Intent to Bid and other documentation as required under SECTION 1 of the General Instructions to Bidders.

Respectfully submitted,

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Address of Bidder

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_

\_\_\_\_\_  
Print Name

Phone No. \_\_\_\_\_

E-mail address \_\_\_\_\_

\_\_\_\_\_  
Title

Facsimile No. \_\_\_\_\_

**THIS NOTICE OF INTENTION TO BID MUST BE RECEIVED ON OR BEFORE  
2:00 P.M., March 7, 2005**



## QUALIFICATION QUESTIONNAIRE

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Having been first duly sworn and deposed, the undersigned states that the Bidder possesses the minimum qualifications required in Section 1 of the General Instructions to Bidders and that the Bidder furnishes the following information as proof of qualifications:

Exact legal name of Bidder/Company

\_\_\_\_\_  
\_\_\_\_\_

2. Business Organization:

☐ Individual      ☐ Partnership ☐ Corporation ☐ Joint Venture

3. Principal office address \_\_\_\_\_

\_\_\_\_\_

Phone numbers(bus) \_\_\_\_\_ (res) \_\_\_\_\_

Cellular/Pager No. \_\_\_\_\_ Fax No. \_\_\_\_\_

If a corporation, answer the following: (items 4 through 9)

4. Date incorporated? \_\_\_\_\_ 5. In what State? \_\_\_\_\_

6. Authorized to do business in Hawaii? \_\_\_\_\_ If yes, as of what date? \_\_\_\_\_

7. Name, address & principal occupation of principal officers:

President: \_\_\_\_\_

\_\_\_\_\_

Vice President: \_\_\_\_\_

\_\_\_\_\_

Treasurer: \_\_\_\_\_

\_\_\_\_\_

Secretary: \_\_\_\_\_

Others: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Name, address and percentage of stock held by principal stockholders:

	<u>Name</u>	<u>Address</u>
(1)	_____	_____
	Percentage of stock _____ %	_____
(2)	_____	_____
	Percentage of stock _____ %	_____
(3)	_____	_____
	Percentage of stock _____ %	_____
(4)	_____	_____
	Percentage of stock _____ %	_____
(5)	_____	_____
	Percentage of stock _____ %	_____

9. Total capitalization: \_\_\_\_\_

Amount of capital stock issued: \_\_\_\_\_

Amount paid in: \$ \_\_\_\_\_

If a partnership, answer the following: (items 10 through 14)

10. Date organized? \_\_\_\_\_

11. Type of partnership (General, Limited, Other): \_\_\_\_\_

12. Agreement recorded (County, State and Date): \_\_\_\_\_

13. Registered in Hawaii? \_\_\_\_\_ If yes, when? \_\_\_\_\_

14. List name and residence address of each partner (including silent partners) and whether a general, limited, special or other kind of partner and list share of each partner:

	<u>Name</u>	<u>Address</u>
(1)	_____	_____
	Share _____	_____
(2)	_____	_____
	Share _____	_____
(3)	_____	_____
	Share _____	_____
(4)	_____	_____
	Share _____	_____
(5)	_____	_____
	Share _____	_____
(6)	_____	_____
	Share _____	_____
(7)	_____	_____
	Share _____	_____

All Bidders must complete or answer the following items:

15. Describe and/or attach evidence of a minimum of three years experience of the bidder in the ownership and operation of a full service restaurant, or food service business that operated 365 days per year, including the number of years of experience. Attach a separate sheet(s) if additional space is needed.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

16. Give the business names and locations of places at which the Bidder has operated the businesses mentioned in Question 15, together with the dates of operation:

	<u>Name</u>	<u>Address</u>
(1)	_____	_____
	Dates _____	_____
(2)	_____	_____
	Dates _____	_____
(3)	_____	_____
	Dates _____	_____
(4)	_____	_____
	Dates _____	_____
(5)	_____	_____
	Dates _____	_____
(6)	_____	_____
	Dates _____	_____

16. Attach evidence of meeting the minimum annual gross income (attach federal tax returns) required by this solicitation from owning and operating a restaurant or food service business during two of the three immediately preceding fiscal years. The minimum requirement of working capital is \$50,000. (refer to Section 1, General Instructions to Bidders):

ANNUAL GROSS REVENUE

2001    \$ \_\_\_\_\_

2002    \$ \_\_\_\_\_

2003    \$ \_\_\_\_\_

17. List below the names, addresses and phone numbers of the landlords for the operations listed in Question 16:

Operation \_\_\_\_\_

Landlord \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_

(2) Operation \_\_\_\_\_

Landlord \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Phone No. \_\_\_\_\_

(3) Operation \_\_\_\_\_

Landlord \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Phone No. \_\_\_\_\_

(4) Operation \_\_\_\_\_

Landlord \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Phone No. \_\_\_\_\_

(5) Operation \_\_\_\_\_

Landlord \_\_\_\_\_

Address \_\_\_\_\_

Phone No. \_\_\_\_\_

(6) Operation \_\_\_\_\_

Landlord \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

Phone No. \_\_\_\_\_

18. Have any leases, contracts or agreements for the operation of any restaurants, food concessions or similar businesses owned or operated by the Bidder ever been cancelled? If yes, give details on a separate sheet.

Yes ( )      No ( )

19. Has the Bidder ever had any license for the sale of alcoholic beverages suspended or revoked? If yes, give details on a separate sheet.

Yes ( )      No ( )

20. Has the Bidder ever been fined for any violations of City, County and/or State Health Department or Board of Health regulations governing the preparation and sale of food or beverages during the previous five-year period? If yes, give details on a separate sheet.

Yes ( )      No ( )

21. Technical References: Give at least three (3) references as to the Bidder's technical ability to operate a full service restaurant:

(1) Name of Reference \_\_\_\_\_

Address \_\_\_\_\_

Phone No. \_\_\_\_\_

(2) Name of Reference \_\_\_\_\_

Address \_\_\_\_\_

Phone No. \_\_\_\_\_

(3) Name of Reference \_\_\_\_\_

Address \_\_\_\_\_

Phone No. \_\_\_\_\_

22. Attach evidence of liquid working capital of \$50,000.00 for the location bid on or a firm commitment from a financial institution doing business in the State of Hawaii for a loan of \$50,000.00:

(2) Name of Reference \_\_\_\_\_

Address \_\_\_\_\_

Phone No. \_\_\_\_\_

(2) Name of Reference \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_

(3) Name of Reference \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_

23. Furnish and attach hereto an audited Balance Sheet and Income Statement, in reasonable detail, for each of the last three (3) fiscal years, and the independent Certified Public Accountant's opinions. Copies of the Bidder's federal and state income tax returns or a parent corporation's published annual reports will meet this requirement.
24. The Bidder may furnish and attach hereto any pertinent information including additional information not specifically required by this Questionnaire.
25. The Bidder hereby consents to and authorizes the Board to confirm all or any of the foregoing information with any financial institution or any other source the Board deems necessary.
26. The Bidder affirms that it has in its possession or is able to obtain in Hawaii the equipment and capital necessary to renovate and operate the required restaurant and food service operations, as provided for in Section 4 of the Specifications.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name of Bidder

(Corporate Seal)

By \_\_\_\_\_  
Its

By \_\_\_\_\_  
Its

STATE OF )  
COUNTY OF ) SS  
)

\_\_\_\_\_ and \_\_\_\_\_,  
being duly sworn, depose and say: that he/she/they is/are the

\_\_\_\_\_ and \_\_\_\_\_,

respectively of \_\_\_\_\_,  
in whose behalf he/she/they makes/make this affidavit; that he/she/they has/have read the  
foregoing qualification questionnaire, the answers thereto and information submitted therewith;  
that said answers and information are true and correct to the best of his/her/their knowledge and  
belief.

By \_\_\_\_\_  
Its

By \_\_\_\_\_  
Its

Subscribed and sworn to

before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2005

\_\_\_\_\_  
Notary Public, \_\_\_\_\_

My commission expires \_\_\_\_\_



**BID PROPOSAL FOR THE  
WAILUA MARINA RESTAURANT CONCESSION AT WAILUA RIVER STATE PARK  
KAPAA, KAUAI, HAWAII**

Honorable Peter T. Young, Chairperson  
Board of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

Dear Sir:

The undersigned bidder declares that it has thoroughly examined and is familiar with the Notice of Intent to Bid, the General Instructions to Bidders, Specifications and the Concession Lease for Wailua River State Park Marina Restaurant that include operation of a full service restaurant within the area described in the Concession Lease Agreement, which is attached, and that this proposal is made without collusion with any other person, firm, or corporation.

The undersigned bidder understands and agrees to an initial capital improvement expenditure for the interior renovation of the subject property of a minimum of FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00) in accordance with the terms and conditions of the Concession Lease.

The undersigned bidder further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts.

The undersigned bidder bids as the minimum annual rental guarantee for the first 5 year period of the Lease as follows:

Years 1-5 \_\_\_\_\_ Dollars (\$\_\_\_\_\_),

For subsequent rental periods the minimum annual guaranteed rent shall be adjusted and also redetermined in accordance with the Concession Lease Agreement;

And bids for each revenue component as percentage rental for each year of the concession lease, the following:

<u>Revenue Component</u>	<u>Percentage Rent</u>
1. Restaurant Food & non alcoholic Beverage Sales	_____ %
2. Alcoholic Beverages Sales	_____ %
3. Retail & Other Services	_____ %

The undersigned bidder agrees that, if awarded the concession lease for the concession, it will enter into a concession lease with the State of Hawaii in accordance with the terms and conditions set forth in the Bid Proposal Form, the General Instructions to Bidders, Specifications and the Concession Lease contract; and that it will furnish a performance bond in the sum equal to the minimum annual rent guarantee.

The undersigned bidder submits:

\_\_\_\_\_ Surety Bond                      \_\_\_\_\_ Cashier's check

\_\_\_\_\_ Certified Check                      \_\_\_\_\_ Legal Tender

in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as required by Section 3 of the General Instructions to Bidders and made payable to the "State of Hawaii Department of Land and Natural Resources".

The undersigned bidder understands and agrees that the Department of Land and Natural Resources may accept or reject any or all bids.

Respectfully submitted,

\_\_\_\_\_  
Name of Bidder

By: \_\_\_\_\_  
Authorized Signature

Title \_\_\_\_\_

Address of Bidder \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone of Bidder \_\_\_\_\_

Email Address of Bidder \_\_\_\_\_

Dated at Honolulu, Hawaii \_\_\_\_\_

# **SPECIFICATIONS**

## **SECTION 1. TERMS, DEFINITIONS AND ACRONYMS**

Parks Administrator = The contracting officer for the State of Hawaii  
Procurement Office.

State Parks = Division of State Parks, located at 1151 Punchbowl Street, Room,  
310, Honolulu, Hawaii 96813;  
P. O. Box 621, Honolulu, Hawaii 96809.

Bidder or Offeror = Any individual, partnership, firm, corporation, joint venture, or  
other entity submitting directly or through a duly authorized  
representative or agent, a bid for the good, service, concession or  
construction contemplated.

HRS = Hawaii Revised Statutes

HAR = Hawaii Administrative Rules

IFB = Invitation for Bids

As used herein, the term:

a. "Board" means the Board of Land and Natural Resources of the State of Hawaii, or its  
successor or authorized representative.

b. "Chairperson" means the Chairperson of the Board of Land and Natural Resources of  
the State of Hawaii.

c. "Concession" means the grant to a person or entity of the privilege to operate a  
restaurant concession at a state park for the Board of Land and Natural Resources, State of  
Hawaii.

d. "Concessionaire" means the successful bidder or party entering into the contract with the Board for the privilege to operate the Wailua Marina Restaurant concession. The term shall also include the Concessionaire's successors, assigns or legal representatives, and its agents, managers and employees where the context so admits or requires.

e. "Contract" means the written concession lease agreement between the Chairperson of the Board on behalf of the Board of Land and Natural Resources and the Concessionaire to operate the Wailua Marina Restaurant concession. The contract includes the Invitation for Bids, consisting of the Offer Form, Surety Bid Bond, Notice of Intention to Bid, Qualification Questionnaire, Specifications, General Instructions to bidders, Concession Lease, Performance Bond, exhibits and applicable administrative rules of the Board of Land and Natural Resources and the Department of Health.

f. "Fundraisers" means any event sponsored by a non-profit organization, an educational institution, a political party or political candidate in which the primary purpose of the event is to raise moneys for the individual or group's primary program, and the funds raised through admission, donation, gifts or other items exceed the cost of sponsoring the activity or program at the park.

g. "Gross Receipts" means the total amount received or realized by the Concessionaire from all cash sales, made pursuant to rights authorized in the contract; provided that gross receipts shall exclude any Concessionaire payments to the Hawaii State Tax Collector for general excise tax and use tax, if applicable, included in the retail price, paid by the customers and not separately collected by the Concessionaire. The following shall be excluded from the computation of gross receipts:

1. Receipts from the sale or trade-in of any of the Concessionaire's furniture, fixtures or equipment used in the concession operation; and
2. Receipts from the sale of uniforms or clothing when such uniform or clothing is required to be worn by employees; and
3. Gratuities or tips given by patrons or customers to the employees.

Whenever the context of the contract requires it, the masculine shall be deemed to embrace and include the feminine and neuter, and the singular shall be deemed to embrace and include the plural.

In the event any term, covenant or condition of the contract is held to be invalid by any court of competent jurisdiction, the invalidity shall not affect any other term, covenant or condition of the contract; provided, that the invalidity does not materially prejudice the rights and obligations of either the Board or the Concessionaire contained in the valid terms, covenants or conditions of the contract.

In case of any dispute as to the interpretation of any term or provision, the interpretation by the Board shall govern and control. In addition, the parties hereto agree that the Board shall have the sole power to decide and resolve any matter which may come up in the future and which is not covered by contract.

## SECTION 2. SCOPE AND SCHEDULE

The providing of a full service restaurant concession located at Wailua Marina River State Park, Kauai, Hawaii, shall be in accordance with the Concession Lease, Specifications, Bid Proposal Form and General Instructions to the Bidders, Notice of Intention to Bid, Qualification SPECIFICATIONS

Questionnaire Chapter 184 HRS (not attached) and Administrative Rules of the Department of Land and Natural Resources, HAR 13-6-146 (not attached).

The tentative schedule of related activities for this Invitation For Bid (IFB) are as follows:

<b>Publication</b>	<b>January 24,26,28, 2005</b>
<b>Facility Inspection</b>	<b>February 28, 2005 (10 A.M. on site)</b>
<b>Notice of Intention to Bid</b>	<b>March 7, 2005</b>
<b>Bid proposal Due</b>	<b>March 28, 2005</b>
<b>Start of Concession Lease</b>	<b>June 1, 2005</b>

### SECTION 3. CONTRACT ADMINISTRATION

For the purpose of this contract, Mr. Daniel S. Quinn, Administrator of the Division of State Parks, Department of Land & Natural Resources is the Contract Administrator.

### SECTION 4. REQUIRED REVIEW

Examination of Project and Other Requirements. Bidder is responsible for acquainting himself with all bid and contract documents (including, but not limited to the terms and conditions of the Concession Lease) and to make all necessary investigations and examinations of the park and restaurant facility, and the concessionaire area. Bidder shall be responsible for acquainting himself with the physical location and characteristics of the concession premises, and shall judge for himself all of the circumstances affecting his offer. Failure to do so will not be grounds for any claim that the Bidder did not understand the conditions of the proposal and will not act to relieve any condition of the contract or proposal documents. The submission of a bid shall be considered conclusive evidence that the Bidder has made such investigations and examinations.

The following are some but not limited to costs and expenses that shall be the responsibility of the winning bidder:

### Due Diligence

DLNR makes no representations regarding the condition of the subject property or the suitability of the site for any development proposed by any interested bidder. The bidder shall, at its cost, be responsible for conducting its own investigations and due diligence regarding the subject property.

### Environmental Assessments and Environmental Impact Statements

The bidder shall, at its cost, prepare and process any environmental assessments and environmental impact statements as may be required by Chapter 343, Hawaii Revised Statutes.

### Land Use Entitlements and Permits

To the extent required by law, the bidder shall, at its cost, obtain all land use entitlements and government permits/approvals necessary to construct the bidder's plan.

### Management / Operations

The bidder shall, at its cost, be responsible for the operations and management of the project, including all marketing, management, and maintenance functions.

### Fees/Costs

The bidder shall pay all charges required by law and all costs incurred by DLNR in connection with the preparation and processing of this RFQ/RFP, including but not limited to the cost of preparing any and all agreements, lease, survey maps and descriptions, publication fees for this RFQ/RFP, appraisal fees, conveyance taxes, and recordation fees.

Bidder shall contact the designated representative or designee to attend the inspection tour that is scheduled for **10:00 A.M. (on site) February 28, 2005.**

### SECTION 5. NOTICE OF INTENTION TO BID

This section was intentionally omitted.

### SECTION 6. BID PREPARATION

This section was intentionally omitted.

### SECTION 7. METHOD OF AWARD



This section was intentionally omitted.

#### SECTION 8. CONTRACT EXECUTION

This section was intentionally omitted.

#### SECTION 9. REQUIREMENT OF CONTRACT PERFORMANCE BOND

This section was intentionally omitted.

#### SECTION 10. LIABILITY INSURANCE

The Concessionaire shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Concessionaire and its subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under this contract, whether such operations be by himself or by an subcontractor or anyone directly or indirectly employed by either of them. If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the Concessionaire providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, Concessionaire may require subcontractor to provide its own insurance that meets the requirements herein. It is understood that a subcontractor's insurance policy or policies are in addition to the Concessionaire's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Concessionaire, including its subcontractor(s) where appropriate.

Coverage	Limits
Commercial General Liability	\$2,000,000 combined single (occurrence form) limit per occurrence for bodily injury and property damage

Basic Motor Vehicle Insurance

\$1,000,000 per occurrence for And Liability  
Policies bodily injury

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Division of State Parks, P. O. Box 621, Honolulu, Hawaii 96809."
2. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon Concessionaire's execution of the contract, the Concessionaire agrees to deposit with the State of Hawaii certificate(s) of insurance necessary to satisfy the State that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) therefore on deposit with the State during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by the State, Concessionaire shall be responsible for furnishing a copy of the policy or policies.

Failure of the Concessionaire to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the State to exercise any or all of the remedies provided in this contract for a default of the Concessionaire.

The procuring of such required insurance shall not be construed to limit Concessionaire's liability hereunder nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, Concessionaire shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

#### SECTION 11. TIME OF WORK.

All work must be performed during the normal business hours and days of the Park. Concessionaire shall employ, insofar as possible, such methods and means of carrying out his work so as not to cause any interruptions or interference with park operations. Where Concessionaires' work will result in interruptions, the Concessionaire will rearrange his schedule of work accordingly.

#### SECTION 12. LIQUIDATED DAMAGES.

This section was intentionally omitted.

#### SECTION 13. CONCESSIONAIRE EMPLOYEES.

The Concessionaire's employees presenting themselves to the offices for delivery of goods and services or construction must be identified by the Concessionaire as the Concessionaire's employees. The State reserves the right to refuse access to those not so identified.

The Department reserves the right to deny access to any employee of the Concessionaire on the Department's premises whom the Department deems incompetent, negligent or otherwise objectionable.

Concession Lease # \_\_\_\_\_

## CONCESSION LEASE

This Concession Lease made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the State of Hawaii, by its Board of Land and Natural Resources, hereinafter referred to as the “Lessor”, and \_\_\_\_\_, whose principal place of business and mailing address is \_\_\_\_\_, hereinafter referred to as the “Concessionaire”.

### WITNESSETH:

WHEREAS, the Lessor owns the lands and facilities, and is vested with the control and management, of Wailua Marina River State Park, hereinafter referred to as the “Park”, on the island of Kauai; and

WHEREAS, the Lessor has determined that it is desirable and appropriate to establish within the Park a concession of the type described in Attachment A; and

WHEREAS, the Lessor, pursuant to and in accordance with Hawaii Revised Statutes (HRS) chapter 102, has determined that the Concessionaire is the highest responsible and qualified bidder; and

WHEREAS, the Lessor and the Concessionaire desire to enter into this Concession Lease on the terms and conditions herein;

NOW, THEREFORE, the Lessor and the Concessionaire, for and in consideration of the premises, the rental hereinafter reserved, and of the terms, covenants and conditions hereafter contained to be kept and performed by the Lessor and the Concessionaire, respectively, DO HEREBY AGREE AS FOLLOWS:

### **NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LESSOR RESERVES THE FOLLOWING:**

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. “Minerals,” as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that “minerals” shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Concessionaire's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the

right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Concessionaire for any of Concessionaire's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this Concession Lease, excluding those improvements constructed during the term of this Concession Lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including Chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.

#### **THE CONCESSIONAIRE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:**

1. Concession; authorized use of premises. The Concessionaire, during the term of this Concession Lease, shall be authorized to establish and operate a full service restaurant concession to be open and operate 365 days per year serving at a minimum, lunch and dinner every day, as described in Attachment A, attached hereto and made a part hereof, from the Premises. No other use of the Premises shall be authorized under this Concession Lease. Any additional use or modification of use shall require the prior consent of the Lessor in writing, which consent may be withheld for any reason.

Notwithstanding the foregoing, the Lessor reserves the right to (a) determine the nature and type of merchandise and service which may be sold or furnished by the Concessionaire, and (b) allow periodic activities by others within the Park, including but not limited to fundraising activities.

The Premises shall not be used as a storage area for storing supplies other than those used for this Concession Lease.

Unless otherwise specifically provided in writing, the Premises shall not be used for the Concessionaire's lodging or sleeping purposes.

The Premises shall not be used for any illegal purpose. The Concessionaire shall not permit any disorderly persons or persons engaging in illegal, immoral or indecent activities to remain upon or loiter within the Premises.

2. [Intentionally omitted].

3. [Intentionally omitted].

4. Quality Control. All food and beverages, and other merchandise and services for sale or rental shall be subject to inspection and approval or rejection by the Lessor in its sole discretion. Lessor reserves the right to prohibit the Concessionaire from selling or renting

products or services that fail to meet the quality standards the Lessor, in its sole reasonable discretion, deems to be appropriate for this concession. Rejected merchandise shall be immediately removed from the Premises and the Concessionaire shall immediately cease to provide rejected services.

The Lessor may utilize any and all reasonable methods in measuring customer satisfaction with the quality or adequacy of the Concessionaire's food and beverages, and other products and services offered to the public, including, but not limited to, observation, customer questionnaires, customer interviews, customer complaints, and independent public surveys. The Lessor shall notify the Concessionaire in writing whenever Lessor determines that there is a lack of customer satisfaction. The Concessionaire shall be given a reasonable opportunity to correct the default; provided that if the default continues without material abatement for more than thirty (30) calendar days, the Lessor shall have the right to terminate this Concession Lease.

5. Premises. The Concessionaire, upon payment of the required rents, fees and charges herein and the observance and performance of such further terms and conditions as are hereinafter provided, shall occupy and use the Premises, as described and delineated in Attachment B attached hereto and made a part hereof, during the term of this Concession Lease to operate the Concession.

6. Non-warranty. The Lessor does not warrant the conditions of the Premises, as the same are being leased as is, where is.

7. Term. The term of this Concession Lease shall be for 180 months, commencing on \_\_\_\_\_, 2005, and expiring on \_\_\_\_\_31, 2020.

8. [Intentionally omitted].

9. Rent. The Concessionaire, without notice or demand, shall pay to the Lessor as and for rental for the use of the Premises and for the privilege of operating the concession, for and during the term of this Concession Lease, free from any and all claims, deductions, or set offs against the Lessor, and at such times and in such manner as hereinafter provided.

10. Monthly rent. The monthly rent for the first five (5) years of this Concession Lease shall be the greater of the following:

(a) One twelfth of the minimum annual guaranteed rent of **\$Insert higher of upset or winning bid; or**

(b) A sum equal to the following percentages of the Concessionaire's gross receipts for the different revenue components for the month:

1. Restaurant Sales \_\_\_\_\_%

2. Alcoholic beverages \_\_\_\_\_%

3. Retail & Other Services \_\_\_\_\_ %

In recognition of the improvements that Concessionaire will be required to make to the building/restaurant under paragraph 26 of this Concession Lease, Lessor agrees to temporarily waive the monthly rent. Notwithstanding the foregoing, the waiver period shall immediately cease and the Concessionaire shall immediately commence paying the required monthly rent, throughout the remaining term of this Concession Lease, **upon the first to occur of one of the following:** (a) 6 months after the commencement date of this Concession Lease; (b) the date that the Concessionaire receives its occupancy permit for the building/restaurant; **or** (c) November 1<sup>st</sup>, 2005; **whichever occurs first.**

11. **Minimum Annual Rental Adjustment.** Commencing at the expiration of the fifth (5th) year of the term of this Concession Lease, and continuing at the expiration of each second (2nd) year thereafter, the minimum annual guaranteed rent shall be redetermined for the following 2-year rental period, and shall be calculated based upon the average annual rent paid or owed to the Lessor for the immediately preceding 2-year rental period. For example, if the annual rent for 2009 is \$75,000 (based upon the minimum guaranteed rent or percentage rent, whichever is higher), and if the annual rent for 2010 is \$80,000 (based upon the minimum guaranteed rent or percentage rent, whichever is higher), then the minimum annual guaranteed rent for the following 2-year rental period (2010 through the end of 2012) shall be \$77,500. Notwithstanding anything herein to the contrary, in no event shall the redetermined minimum annual guaranteed rent be less than the minimum annual guaranteed rent for the preceding rental period.

At the beginning of the tenth (10th) year there shall be a minimum annual guaranteed rent reopening. The rental for the ensuing period shall be the fair market rental at the time of reopening and shall be adjusted at the expiration of each second (2<sup>nd</sup>) year thereafter in accordance with the formula described above (i.e., the calculation of the average annual rent paid or owed to Lessor for the immediately preceding 2-year rental period). At least six (6) months prior to the time of reopening, the fair market rental shall be determined by a staff appraisal or independent appraisal, as allowed by law, whose services shall be contracted for by the Lessor, and the Concessionaire shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Concessionaire fail to notify Lessor in writing within thirty (30) days after receipt thereof that Concessionaire disagrees with the fair market rental as determined by Lessor's appraiser and that Concessionaire has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Concessionaire and shall be the fair market rental as of the date of reopening. If Concessionaire has notified Lessor and appointed his appraiser as stated hereinabove, Concessionaire's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Concessionaire's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in

issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Concessionaire, subject to vacation, modification or correction in accordance with the provisions of Chapter 658A, Hawaii Revised Statutes. Each party shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Concessionaire. All appraisal reports shall become part of the public record of the Lessor.

In the event that the appraisers are unable to determine the fair market rental before the reopening date, or by the foregoing prescribed time, whichever is later, the Concessionaire shall pay the fair market rental as determined by Lessor's new appraised value until the new rent is determined and the rental paid by Concessionaire shall then be subject to retroactive adjustments as appropriate to reflect the fair market rental determined as set forth hereinabove. However, Concessionaire or Concessionaire's appraiser's failure to comply with the procedures set forth above shall constitute a waiver of Concessionaire's right to contest the new rent, and the Concessionaire shall pay the rent as determined by Lessor's appraiser without any retroactive adjustments. Alternatively, Lessor may treat this failure as a breach of this lease and terminate the lease.

12. Time for payment. The minimum annual guaranteed rent shall be paid in twelve (12) equal monthly installments in advance on the first day of each month. The percentage rent, if any, shall be paid on or before the twentieth (20<sup>th</sup>) day of the month for gross receipts received in the preceding month.

13. [Intentionally omitted].

14. Gross receipts. The term "gross receipts" shall mean the total amount received or realized by, or accruing to, the Concessionaire from all sales from the operation of the restaurant, including but not limited to food and beverage sales, retail sales, and from other rentals and sales, including those through vending machines and other coin-operated devices, for cash or credit, of services, materials, and other merchandise made pursuant to the privileges authorized in this Concession Lease, including "gross receipts of subconcessionaires" as defined hereinbelow, and commissions earned on contracts or agreements with other persons or companies operating in the Park. Provided however, the Concessionaire is allowed to claim exclusions from its gross receipts: any intra-company earnings on account of charges to other departments of the operation (such as laundry), charges to employees for meals, lodging, or transportation, cash discounts on purchases, cash discounts on sales, returned sales, interest on money loaned or in bank accounts, income from investments, income from subsidiary companies outside the Park, sale of property other than property purchased in the regular course of business, and any sales and excise taxes that are added as separate charges to the approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided however, the amount excluded shall not exceed the amount actually due or paid to governmental agencies. The Concessionaire shall report the full amount of all receipts to Lessor, and shall identify any and all claimed exclusions.

15. Gross receipts of subconcessionaires. The term "gross receipts of subconcessionaires" means the total amount received or realized by, or accruing to, all subconcessionaires from all sources, including all sales from the operation of the restaurant, including but not limited to food and beverage sales, retail sales, and including receipts from



vending machines or other coin-operated devices, as a result of the exercise of the privileges conferred by subconcession contracts hereunder, without allowances, exclusions, or deductions of any kind or nature whatsoever, except as provided in the preceding section 14 [Gross Receipts]. All subconcessionaires shall report the full amount of all receipts to the Concessionaire, and shall identify any and all claimed exclusions.

16. Sales and rental accountability. All sales and rental transactions shall be registered in the presence of the customer at the time of the sale or rental in a cash register with the following minimum features:

- a. Visual indication on both front and back of register;
- b. Detail audit tape;
- c. Receipt printer for furnishing receipt to customer;
- d. Non-resettable group total with 7-wheel accumulative capacity;
- e. Non-resettable totalizer overflow; and
- f. Non-resettable transaction consecutive number.

Lessor shall have the right to determine the number of cash registers to be installed and the location and placement of the same.

17. Procurement of goods, equipment, and services. In computing financial information for every purpose in this Concession Lease, the Concessionaire agrees that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for procurement of equipment, merchandise, supplies, or services from sources controlled by or under common ownership with the Concessionaire or by any other device.

18. Accounting records and reports. The Concessionaire shall maintain accounting records in accordance with generally accepted accounting practices. The Concessionaire shall submit, no later than the 20<sup>th</sup> day of each month, a report showing in accurate detail the amount of its gross receipts and the gross receipts of any subconcessionaires for the immediate prior month, together with all claimed exclusions. Additionally, the Concessionaire shall submit annually, not later than sixty (60) days after the 31<sup>st</sup> day of December, a written statement certified as correct by the Concessionaire, or by a person duly authorized by the Concessionaire to so certify, showing in accurate detail the amount of its gross receipts and the gross receipts of any subconcessionaires during the preceding lease year, together with all claimed exclusions. Such written statement must also be duly verified or certified by an independent Certified Public Accountant. The statements shall be in a form and style, and contain those details and breakdowns as the Lessor may require.

Without prejudice to any remedies herein provided for default, if the Concessionaire shall fail to timely furnish any required report or certification or verification, the Lessor may have the report prepared on the Concessionaire's behalf, at the sole cost and expense of the Concessionaire, by an accountant selected by the Lessor. The Concessionaire shall furnish to the accountant all records requested for the purpose of preparing the reports, and the Concessionaire shall pay to the Lessor all expenses incurred by the Lessor in securing the reports.

In the event records have not been kept or reports have not been prepared in accordance with the provisions set forth herein, the Lessor shall be entitled to demand and receive, in

addition to (and not in lieu of) all other payments required herein, an additional payment of ten percent (10%) of the minimum annual guaranteed rent.

19. Audit. The Lessor shall have the right to verify and audit all reports from the books, correspondence, memoranda, and other records of the Concessionaire and subconcessionaires, if any, and of the records pertaining thereto of a proprietary or affiliated company, if any, during the term of this Concession Lease and for such time thereafter as necessary to accomplish this verification and audit.

The Lessor shall have access to and the right to examine any pertinent books, documents, papers, and records related to this Concession Lease during the term of this Concession Lease and for five (5) years following the termination of this Concession Lease.

If an audit discloses that the Concessionaire has underpaid the percentage rent due for any period, Lessor shall notify the Concessionaire in writing of such deficiency and upon such notification the deficient amount shall be immediately due and payable by the Concessionaire. If an audit by Lessor's accountant or by a licensed independent certified public accountant retained by Lessor shall disclose that rent has been underpaid by two percent (2%) or more for any period under examination, Lessor, in addition to any other remedies available in this Concession Lease or otherwise, shall be entitled to reimbursement of all costs and expenses incurred in completing any such audit in addition to any deficiency (together with applicable interest, service charge and other charges) revealed or disclosed.

20. Financial statements and balance sheets. Within ninety (90) days of the execution of this Concession Lease or its effective date, whichever is later, the Concessionaire shall submit for the approval of the Lessor, a balance sheet showing assets and liabilities pertaining to the operations hereunder as of the beginning of the operations. The balance sheet shall be accompanied by a schedule describing with particularity and in sufficient detail all items comprising the Concessionaire's assets and liabilities. If the Lessor does not approve of the opening balance sheet as submitted, the Lessor shall so notify the Concessionaire in writing within six (6) months of receipt of the balance sheet, setting forth the reasons for disapproval. The Concessionaire shall thereafter have thirty (30) days to submit a revised and acceptable opening balance sheet. If Lessor does not notify the Concessionaire of its disapproval within six (6) months, the opening balance sheet shall be deemed approved.

On or before the 120<sup>th</sup> day following the close of the Concessionaire's fiscal year, the Concessionaire shall submit financial statements of the concession operation, including a balance sheet.

21. Rent disputes. Any dispute between the Concessionaire and the Lessor on the computation of the rent to be paid under this Concession Lease shall be determined and decided by the Chairperson of the Board of Land and Natural Resources of the State of Hawaii, which decision shall be final and conclusive of any such dispute.

22. Payments. The Concessionaire shall pay rent and other charges to the Lessor at the times, in the manner and form set forth herein at the office of the DEPARTMENT OF LAND AND NATURAL RESOURCES, 1151 Punchbowl Street Room 110, Honolulu, Hawaii 96813,

or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

23. Interest rate and service charge. The interest rate on any and all unpaid or delinquent rentals and other charges shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) per month for each month of delinquency.

24. Existing Improvements. The ownership of all improvements of whatever kind or nature located on the Premises prior to or on the commencement date of this Concession Lease is reserved to the Lessor. The Concessionaire, prior to executing this Concession Lease, has inspected the Premises, and accepts the Premises "as is where is."

25. No Improvements without Approval. Except as may otherwise be allowed under paragraph 26 below [Authorized Construction of Improvements], the Concessionaire shall not at any time construct, place, maintain, or install on the Premises any building, structure or improvement of any kind or description whatsoever, except with the prior written consent of the Lessor and upon conditions the Lessor may impose, including, but not limited to, the adjustment of the rent, provided that the rent shall not be adjusted downward.

26. Authorized Construction of Improvements. The Concessionaire shall, at its own cost and expense, within nine (9) months of the commencement date of this Concession Lease, **but no later than \_\_\_\_\_, 200\_**, complete the interior renovation of the existing building, at a cost of not less than FOUR HUNDRED THOUSAND DOLLARS (\$400,000) ("Building Requirement"), in accordance with plans, specifications and construction and installation costs submitted by the Concessionaire to and approved by the Chairperson of the Board of Land and Natural Resources ("Chairperson") and in full compliance with all applicable laws, ordinances, rules, and regulations. The construction of all improvements shall comply with all governmental requirements related to, among other things, electrical wiring, service meters, fire safety, and accommodation of persons with disabilities in accordance with the Americans with Disabilities Act (ADA) of 1992, and chapter 343, Hawaii Revised Statutes. All authorized improvements shall be constructed or installed in accordance with plans and specifications submitted to and approved by the Chairperson of the Board of Land and Natural Resources. It is specifically understood and agreed that there shall be no improvements or other changes allowed to the exterior of the existing building/restaurant unless approved by the Chairperson.

The minimum Building Requirement of FOUR HUNDRED THOUSAND DOLLARS (\$400,000) shall be comprised of hard construction costs only, that is for materials and labor to complete the construction of the approved improvements. Hard costs may include furniture, fixtures and equipment that have been approved by the Chairperson in accordance with this paragraph. The minimum Building Requirement shall not include soft costs such as design, architectural, planning, or permitting costs, or any loan fees or any construction management fees.

27. Improvement bond. The Concessionaire shall, within sixty (60) days of the submittal and written approval of any construction plan as provided in the foregoing sections, procure and deposit with the Lessor a surety bond in an amount to be determined by the Chairperson and in a form acceptable to the Chairperson, which bond shall name the State of Hawaii as obligee, conditioned upon the faithful observance and performance of the

requirements for the authorized improvements, the completion of the improvements on or before the specified date of completion free from all liens and claims, and that the Concessionaire shall hold the State harmless from all liens, suits, actions, or damages arising out of, caused from, or attributable to the work performed pursuant to the construction of improvements.

28. Ownership of improvements. The ownership of any authorized improvements constructed by the Concessionaire shall be in the Concessionaire until the expiration or early termination of this Concession Lease, at which time the ownership, at the option of the Lessor, shall remain and become the property of the Lessor or shall be removed by the Concessionaire at the Concessionaire's own cost and expense.

29. [Intentionally omitted].

30. Repairs to Improvements. The Concessionaire shall, at its own cost and expense, keep, repair, and maintain all improvements now existing or hereafter constructed or installed on the Premises in good order, condition and repair, reasonable wear and tear excepted.

31. Sanitation. The Concessionaire shall at all times keep and maintain the Premises and improvements, all equipment, utensils, and supplies, and all areas used by or assigned to the Concessionaire and the Concessionaire's customers in a strictly clean, sanitary and orderly condition, and, as applicable, in conformance with the requirements of the State Department of Health. In the event the Lessor notifies the Concessionaire that sanitation and maintenance are not satisfactory, the Concessionaire shall have five (5) days from the date of having received such notice to bring the Premises, improvements, equipment, utensils, supplies, and areas into a sanitary condition satisfactory to Lessor. If the Concessionaire fails to do so, this Concession Lease shall be deemed to have been breached and the Lessor shall have the right, without limiting any other remedies available hereunder, to immediately terminate this Concession Lease.

32. Disposal of garbage, rubbish and other refuse. The Concessionaire shall provide sufficient refuse containers or receptacles lined with disposable plastic garbage bags and fitted with swinging, self-closing covers in the immediate vicinity of, or within, the Premises to minimize any sanitation problem. The Concessionaire shall empty the containers or receptacles as often as necessary, but in any event no less than once a day. The Concessionaire shall transport all refuse to an approved county landfill or other disposal area. Piling of boxes, cartons, barrels, or other similar items shall be forbidden on the Premises or in the Park, unless an enclosed refuse storage area is provided by the Lessor for the Concessionaire's use or the Concessionaire constructs the same at the Concessionaire's sole cost and expense; provided, however, that the construction and location of the storage area shall be subject to the prior written approval of the Lessor, which approval may be withheld for any reason.

33. Waste and unlawful, improper, or offensive use of premises. The Concessionaire shall not commit, suffer, or permit to be committed, any waste, nuisance, strip or unlawful, improper, or offensive use of the Premises or any part thereof, nor, without the prior written consent of the Lessor, cut down, remove, or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the Premises. In the event the Concessionaire observes or otherwise obtains knowledge of any waste, nuisance, strip or unlawful, improper or offensive use

of the Premises by any person, the Concessionaire shall so notify the Lessor as soon as practicable.

34. Signs and advertising. The Concessionaire shall furnish, install and maintain signs. Prior to installation, all signs shall be approved by the Lessor as to appropriateness, size, design and location, which approval shall be in writing.

No hawking, solicitation, or unauthorized advertising shall be made by the Concessionaire on or outside the Premises or on a public address system.

35. Concessionaire's employees. Unless waived in writing by the Chairperson, the Concessionaire shall require its employees who come in direct contact with the public to wear a uniform or badge by which they may be known and distinguished as employees of the Concessionaire. The Concessionaire shall require its employees to observe strict impartiality as to rates and services and in all circumstances to exercise courtesy and consideration in their relations with the public. Lessor reserves the right to eject from the Premises any employee of the Concessionaire whose conduct is improper, inappropriate, or offensive. Lessor shall have the right to require the Concessionaire to supply an adequate replacement within a reasonable time after ejection.

36. Inspection by Lessor. The Concessionaire shall permit the Lessor and its agents, at all reasonable times during the term of this concession lease to enter the Premises, as applicable, to examine the condition and state of repair of same.

37. Utilities. If public utility service is not available, then when available, the Lessor shall furnish utilities to the Concessionaire at reasonable rates to be fixed by the Lessor or Lessor shall require Concessionaire to pay all expenses incurred to sub-meter utilities for use in connection with the operation of the concession. If sub-meters are installed Concessionaire shall reimburse Landlord monthly for utility usage at reasonable rates to be fixed by the Lessor, for use in connection with the operations of the concession. If utility services are not available or sufficient, the Concessionaire may, with the approval of, and under requirements to be prescribed by, the Lessor, secure the same at its own cost and expense from sources outside of the Park, or may arrange for the installation of utility services within the Park, all at the Concessionaire's own cost and expense, subject to the following conditions:

- (a) Any service provided by the Concessionaire under this section shall, if requested by the Lessor, be furnished to the Lessor to the extent that it will not unreasonably restrict anticipated use by the Concessionaire. The rate per unit charged to the Lessor for the utility service shall be approximately the average cost per unit to provide the service.
- (b) All plans, appliances, and machinery to be used in connection with the privileges granted in this section, as well as the location and installation of the appliances and machinery shall first be approved by the Lessor.

38. Liens. The Concessionaire shall not commit or suffer any act or neglect whereby the Premises or any improvement thereon or the estate of the Concessionaire in the same shall become subject to any attachment, lien, charge or encumbrance whatsoever, and the

Concessionaire shall indemnify and hold harmless the Lessor from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

39. Assignments, etc. Except as otherwise authorized by this Concession Lease, the Concessionaire shall not transfer, assign, or permit any other person to occupy or use the Premises or any portion thereof, or transfer or assign this Concession Lease or any interest therein, either voluntarily or by operation of law, and any transfer or assignment made shall be null and void; provided however, that with the prior written approval of the Lessor the assignment and transfer of this Concession Lease or portion thereof may be made, provided further, however, that prior to the approval of any assignment of this Concession Lease, the Lessor shall have the right to review and approve the consideration paid by the assignee and may condition its consent to the assignment on revision of the rent to be paid under this Concession Lease based upon the consideration paid by the assignee to the Concessionaire. Any such rent revision shall be upward and not downward.

40. Subletting. The Concessionaire shall not rent or sublet the whole or any portion of the Premises or this Concession Lease without the prior written approval of the Lessor; provided however, that prior to any such approval, the Lessor shall have the right to review and approve the rent to be paid by the sublessee and may condition its consent on revision of the rent to be paid by the Concessionaire to the Lessor based upon the rental rate charged to the sublessee. Any rent revision shall be upward and not downward.

41. Surety bond. The Concessionaire, within ten (10) days after the execution of this Concession Lease, shall procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this Concession Lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by the Concessionaire of all the terms, conditions, and covenants of this Concession Lease, in an amount equal to the minimum annual guaranteed rent then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

42. Indemnity. The Concessionaire shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or death, arising out of or resulting from: 1) any act or omission on the part of the Concessionaire relating to the Concessionaire's use, occupancy, maintenance, or enjoyment of the Premises or operation of the concession; 2) any failure on the part of the Concessionaire to maintain the Premises and sidewalks and roadways adjacent thereto in the Concessionaire's control, and including any accident, fire or nuisance growing out of or caused by any failure on the part of the Concessionaire to maintain the Premises in a safe condition; 3) from and against all actions, suits, damages and claims by whomsoever brought or made by reason of the Concessionaire's non-observance or non-performance of any of the terms, covenants and conditions of this Concession Lease, or the rules, regulations, ordinances, and laws of the federal, state, municipal, or county governments.

43. Costs of litigation. In case the Lessor, without any fault on the Lessor's part, shall be made a party to any litigation commenced by or against the Concessionaire (other than condemnation proceedings), the Concessionaire shall pay all costs, including reasonable attorneys' fees, and expenses incurred by or imposed upon the Lessor; furthermore, the

Concessionaire shall pay all costs, including reasonable attorneys' fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this Concession Lease, in recovering possession of the Premises, or in the collection of delinquent rental, taxes, and any and all other charges.

44. Liability insurance. The Concessionaire, at its own cost and expense, shall procure and maintain during the term of this Concession Lease, including any holdover period, a policy or policies of comprehensive general liability insurance, in an amount of at least \$2,000,000 per occurrence, insuring the Lessor and Concessionaire against all claims for personal injury or death. The policy or policies shall cover the entire Premises, including all buildings, improvements, and grounds and all roadways and sidewalks on or adjacent to the Premises in the control or use of the Concessionaire. Prior to entry upon the Premises, the Concessionaire shall furnish the Lessor with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy, each certificate to contain or be accompanied by an assurance of the insurer to notify the Lessor of any intention to cancel the policy prior to actual cancellation. The notice to cancel shall be sent to the Lessor no less than thirty (30) days prior to the date of cancellation.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this Concession Lease. If, in the opinion of the Lessor, the insurance provisions in this Concession Lease do not provide adequate protection for the Lessor, the Lessor may require the Concessionaire to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure the protection for and against the kind and extent of the risks that exist at the time a change in insurance is required. The Lessor shall notify the Concessionaire in writing of changes in the insurance requirements and the Concessionaire shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of this policy or policies shall not release or relieve the Concessionaire of any of its responsibilities and obligations under this Concession Lease or limit the amount of its liability under this Concession Lease. Notwithstanding the policy(s) of insurance, the Concessionaire shall be obligated for the full and total amount of damage, injury, or loss caused by the Concessionaire's negligence or neglect connected with this Concession Lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by the Concessionaire's policy.

45. Fire and extended coverage insurance. The Concessionaire, at its cost and expense, shall procure and maintain at all times during the term of this Concession Lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements within the Premises in the joint names of the Lessor and Concessionaire, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and the Concessionaire shall pay the premiums at the time and place required under the policy. The Concessionaire shall furnish the Lessor on or before the commencement date of this Concession Lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be

accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

The respective interests of Lessor, Concessionaire and any mortgagees in any proceeds of such insurance payable for loss or damage to such buildings, fixtures and improvements shall be fixed and determined as of the date of such loss or damage as follows:

(i) Lessor shall be entitled to collect and receive all proceeds payable for loss or damage to any building, fixtures or other improvements existing and located on the premises at the commencement of the term of this Lease.

(ii) With respect to any proceeds payable for loss or damage to any building, fixtures or other improvements hereafter constructed and placed on the leased premises by Concessionaire, and at the cost and expense of Concessionaire, the interest of Lessor shall be a proportionate amount thereof in the ratio which the expired portion of the term of this Lease from the date of such loss or damage, bears to the whole term of this Lease. The interest of Concessionaire therein shall be the balance of such proceeds.

(iii) The interest of any of Concessionaire's mortgagees in any of such proceeds shall be limited to the amount of and encumber only the interest of Concessionaire in such insurance proceeds. The respective interests and rights of two or more mortgagees in and to such interest of Concessionaire shall be determined between them in accordance with the priority of and the unpaid amounts secured by their respective mortgages.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Concessionaire for rebuilding, repairing, or otherwise reinstating the buildings and improvements in a good and substantial manner according to plans and specifications approved in writing by the Chairperson; provided, however, that with the approval of the Lessor, the Concessionaire may surrender this Concession Lease and pay the balance owing on any mortgage from the Concessionaire's interest in the insurance proceeds as aforesaid; and Concessionaire shall be entitled to retain any remaining proceeds from its interest in the insurance proceeds as aforesaid.

46. Lessor's lien. All buildings, improvements, equipment, fixtures, furniture, furnishings, inventory, merchandise, goods and other property of every kind and description which the Concessionaire shall during the term of this Concession Lease construct, install, place or store, or caused to be constructed, installed, placed or stored, within the leased Premises whether subsequently removed therefrom by the Lessor to a public warehouse or other place of storage and whether exempt from execution or not, shall be bound by and subject to a lien in favor of the Lessor for the payment of the rent and charges herein reserved and any damages arising from any breach by the Concessionaire of any of the terms, covenants or conditions of this Concession Lease; that upon default by the Concessionaire, the Lessor may take possession of said property or any parts thereof and sell or cause the same to be sold at public or private sale, with or without notice, to the highest bidder for cash, and apply the proceeds of said sale toward the cost thereof and the expenses of moving, preserving, protecting, and storing said property, and then toward any amount which may be owing to the Lessor on account of Concessionaire's default. Without limitation to the foregoing, all persons who have any right,



title or interest or security interest in any of the buildings, improvements, equipment, fixtures, furniture, furnishings, and other property constructed, installed, placed, or stored within the leased Premises by Concessionaire, shall be deemed to have subordinated all of their right, title and interest and security interest in and to the same to the lien of the Lessor as set forth herein unless they obtain the prior written approval of Lessor that their said interest shall have priority. Resort by the Lessor to the remedy herein provided shall be in addition to and without prejudice to any other right or remedy which Lessor may have or be entitled.

47. Mortgage. The Concessionaire shall not mortgage, hypothecate, or pledge the Premises or any portion thereof of this Concession Lease or any interest therein without the prior written consent of the Chairperson. Any mortgage, hypothecation, or pledge without the written consent of the Chairperson shall be null and void.

Upon due application, and with the written consent of the Chairperson, the Concessionaire may mortgage this Concession Lease or any interest therein, or create a security interest in the leasehold interest in the buildings and improvements hereby demised. If the mortgage or security interest is to a recognized lending institution in either the State of Hawaii or elsewhere in the United States, the consent may extend to foreclosure and sale of Concessionaire's interest at the foreclosure to any purchaser, including the mortgagee, without regard to whether or not the purchaser is qualified to operate the concession or to lease, own, or otherwise acquire and hold the buildings or improvements or any interest therein. The interest of the mortgagee or holder shall be freely assignable. The term "holder" shall include an insurer or guarantor of the obligation or condition of the mortgage, including the Department of Housing and Urban Development through the Federal Housing Administration, the Federal National Mortgage Association, the Veterans Administration, the Small Business Administration, Farmers Home Administration, or any other federal agency and their respective successors and assigns or any lending institution authorized to do business in the State of Hawaii or elsewhere in the United States; provided that the consent to a mortgage to a non-governmental holder shall not confer any greater rights or powers in the holder than those which would be required by any of the aforementioned federal agencies.

48. Destruction of or damage to premises. If the premises are destroyed or damaged, either wholly or in part, by an act of God, war, fire, or other catastrophe, that cannot be repaired, with reasonable diligence, within nine (9) months after such occurrence, during which time the Concessionaire is unable to operate the concession, the Concessionaire may terminate this Concession Lease as of the date of the damage or destruction, and the Concessionaire shall pay rent prorated up to the date of the termination of this Concession Lease.

49. Park Closure. Lessor reserves the right, in its sole discretion, to interrupt or cancel operation or close any part or the entirety of the Park. Except as provided herein, if the Lessor exercises this right, the Concessionaire shall bear all expenses or losses in full and shall not take or allow to be taken any action for damages against the Lessor.

If the Park is closed or not in operation for a period of seven (7) consecutive days or more, the monthly rental fee may be modified for the period during which the significant part of the Park or the entirety of the Park is closed or not in operation.

If the Park is closed or not in operation for a period of three (3) consecutive months or more, the Concessionaire may terminate this Concession Lease.

50. [Intentionally omitted].

51. Breach. Time is of the essence in this Concession Lease. If the Concessionaire shall fail to pay the rent or any part thereof at the times and in the manner aforesaid within thirty (30) days after delivery by the Lessor of a written notice of the breach or default, or if the Concessionaire shall become bankrupt, or shall abandon the Premises, or if this Concession Lease or the Premises shall be attached or otherwise be taken by operation of law, or if any assignment be made of the Concessionaire's property for the benefit of creditors, or if the Concessionaire shall fail to observe and perform any of the covenants, terms and conditions herein contained and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of this breach or default by personal service, registered mail, or certified mail to the Concessionaire at its last known address and to each mortgagee or holder of record having a security interest in the Premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, as may be amended from time to time, at once re-enter the Premises or any part thereof, and upon or without entry, at Lessor's option, terminate this Concession Lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of this Concession Lease. Without limiting the foregoing, in the event of termination of this Concession Lease, at the option of the Lessor, all buildings and improvements thereon shall remain and become the property of the Lessor or shall be removed by the Concessionaire, and the Lessor shall retain all rent paid in advance as damages.

52. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this Concession Lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days, or any other default or breach within sixty (60) days, from the date of receipt of the notice hereinabove set forth, or within such additional period as the Lessor may allow for good cause shown, and add the cost thereof to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may in its sole and absolute discretion: (a) pay to the holder from any moneys at its disposal, including the state parks special fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder, or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the Lessor, then terminate the outstanding privilege, interest, or estate without prejudice to any other right or remedy for arrears of rent or for any preceding or other breach or default, and use its best efforts to dispose of the affected premises to a qualified and responsible person free and clear of the mortgage and the debt thereby secured; provided that a reasonable delay by Lessor in instituting or prosecuting any right or remedy it may have hereunder shall not operate as a waiver of the right or to deprive it of a remedy when it may still hope otherwise to resolve the problems created by the breach or default. The proceeds of any disposition effected hereunder shall be

applied: first, to reimburse the Lessor for costs and expenses in connection with the redispotion; second, to discharge in full any unpaid purchase price or other indebtedness owing the Lessor in connection with the privilege, interest, or estate terminated; third, to the mortgagee to the extent that the value received by the Lessor upon redispotion exceeds the fair market value of the concession lease at the time of redispotion; and fourth, to the owner of the privilege, interest, or estate.

53. Condemnation. If, at any time during the term of this Concession Lease, any portion of the Premises should be condemned or required for public purposes by any county or city and county, the rental shall be reduced in proportion to the value of the portion of the Premises condemned. The Lessor shall be entitled to collect and receive all compensation and damages payable for or on account of all buildings, fixtures and other improvements existing and located on the premises at the commencement of the term of this Lease. With respect to any permanent improvements hereafter constructed or placed on the premises by Concessionaire during the term of this Lease, the Concessionaire shall be entitled to receive from the condemning authority the proportionate value of the Concessionaire's permanent improvements so taken in the proportion that it bears to the unexpired term of the Concession Lease; and Lessor's interest in such improvements so taken shall be the ratio in which the expired term of this Concession Lease from the effective date of condemnation bears to the whole term of this Concession Lease. Provided however, to the extent that the improvements hereafter constructed or placed on the premises by Concessionaire during the term of this Concession Lease are not part of the aforesaid condemnation or required for public purpose, then Concessionaire may, in the alternative, remove and relocate the aforesaid improvements to the remainder of the lands under this Concession Lease that are not taken by the condemnation. The Concessionaire shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for the leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Concessionaire shall not be exclusive of any other to which the Concessionaire may be entitled by law. Where the portion so taken renders the remainder unsuitable for the use or uses for which the Premises were leased, the Concessionaire shall have the option to surrender this Concession Lease and be discharged and relieved from any further liability therefore; provided that the Concessionaire may remove the permanent improvements constructed, erected or placed by it within a reasonable period as may be allowed by the Lessor.

54. Right to enter. The Lessor or the county or city and county and the agents and representatives thereof shall have the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided, however, that in the exercise of these rights, the Lessor or the county or city and county shall not interfere unreasonably with the Concessionaire or the Concessionaire's use and enjoyment of the Premises.

55. Inspection by prospective bidders. The Lessor shall have the right to authorize any person or persons to enter upon and inspect the Premises at all reasonable times following published notice for the proposed disposition of the same for purposes of informing and apprising the person or persons of the condition of the Premises preparatory to the proposed disposition; provided, however, that any entry and inspection shall be conducted during reasonable hours after notice to enter is first given to the Concessionaire and shall, if the Concessionaire so requires, be made in the company of the Concessionaire or designated agents

of the Concessionaire; provided further, that no authorization for inspection shall be given by the Lessor more than one year prior to the expiration of this Concession Lease.

56. Acceptance of rent not a waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Concessionaire of any term, covenant, or condition of this Concession Lease, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition or option.

57. Extension of time. Notwithstanding any provision contained herein to the contrary, wherever applicable, the Lessor may, for good cause shown, allow to the Concessionaire additional time beyond the time or times specified herein in which to comply, observe, and perform any of the terms, conditions, and covenants contained herein.

58. Justification of sureties. Any bonds required by this Concession Lease shall be supported by the obligation of a corporate surety organized for the purpose of being a surety and qualified to do business in the State of Hawaii, or by not less than two personal sureties, corporate or individual, for which justifications shall be filed as provided in section 78-20, Hawaii Revised Statutes; provided, however, the Concessionaire may furnish a bond in like amount, conditioned as aforesaid, executed by it alone as obligor, if, in lieu of any surety or sureties, it shall also furnish and at all times thereafter keep and maintain on deposit with the Lessor security in certified checks, certificates of deposit (payable on demand or after such period as the Lessor may stipulate), bonds, stocks, or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character as shall be satisfactory to the Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value at which any securities may be accepted and at any time thereafter held by the Lessor under the foregoing proviso shall be determined by the Lessor, and that the Concessionaire may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Concessionaire, but only upon the written consent of the Lessor and that until the consent be granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation thereunder.

59. Waiver, modification, reimposition of bond provisions. Upon substantial compliance by the Concessionaire of the terms, covenants, and conditions herein contained on its part to be observed or performed, the Lessor, at its sole discretion, may waive or suspend the surety bond requirements or modify the same by reducing the amount thereof; provided, however, that the Lessor reserves the right to reactivate or reimpose the bond or bonds in and to their original tenor and form at any time throughout the term of this Concession Lease.

60. Quiet enjoyment. The Lessor covenants and agrees with the Concessionaire that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Concessionaire to be observed and performed, the Concessionaire shall and may have, hold, possess, and enjoy the

Premises for the term leased without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

61. Surrender. At the expiration or early termination of this Concession Lease, the Concessionaire shall peaceably deliver unto the Lessor possession of the Premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Concessionaire shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination or revocation of this Concession Lease, should the Concessionaire fail to remove any or all of the Concessionaire's personal property from the Premises, after notice thereof, the Lessor may remove any or all personal property from the Premises and either deem the property abandoned and dispose of the property, or place the property in storage at the cost and expense of the Concessionaire, and the Concessionaire does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of this Concession Lease.

62. Hazardous materials. Concessionaire shall not cause or permit the escape, disposal, or release of any hazardous materials except as permitted by law. Concessionaire shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the Premises any such materials except to use in the ordinary course of Concessionaire's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent, which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by the Concessionaire, then the Concessionaire shall be responsible for the reasonable costs thereof. In addition, Concessionaire shall execute affidavits, representations and the like from time to time at Lessor's request concerning Concessionaire's best knowledge and belief regarding the presence of hazardous materials on the Premises placed or released by the Concessionaire.

Concessionaire agrees to indemnify, defend, and hold Lessor harmless from any damages and claims resulting from the release of hazardous materials on the Premises occurring while the Concessionaire is in possession, or elsewhere if caused by the Concessionaire or persons acting under Concessionaire. These covenants shall survive the expiration or earlier termination of this Concession Lease.

For the purposes of this Concession Lease, "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

63. Phase one (1) hazardous waste evaluation. Prior to the termination of this Concession Lease or the assignment of the leasehold, Concessionaire shall conduct a Phase One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. Any assignment or voluntary termination by the

Concessionaire will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed. This provision shall survive and continue in effect after termination of this Concession Lease.

64. Archaeological sites. In the event any historic, prehistoric, or archaeological sites, burial sites or remains, such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the Premises, the Concessionaire and the Concessionaire's agents, employees and representatives shall immediately stop all land utilization or work and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

65. Taxes, assessments, etc. The Concessionaire shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises or any part thereof, or any improvements thereon, or the Lessor or the Concessionaire in respect thereof, is now or may be assessed or become liable by authority of law during the term of this Concession Lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, the Concessionaire shall be required to pay only those installments, together with interest, as shall become due and payable during the term of this Concession Lease.

66. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, disability, age, HIV (human immunodeficiency virus) infection, or sexual orientation.

67. State employees. No officer, whether elected or appointed, or employee of the State of Hawaii shall share in, or directly benefit from, this Concession Lease; provided, however, that this restriction shall not be applicable where the state officer or employee is a shareholder in a corporation and does not have a controlling interest in the corporation.

68. Compliance with laws. The Concessionaire shall comply with all the requirements of all municipal, state, and federal authorities and observe all municipal, state, and federal laws, ordinances, rules and regulations pertaining to the Premises, now in force or which may hereinafter be in force.

69. Hawaii law. This Concession Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

70. Headings. The paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe, or limit the scope or intent of any provision of this Concession Lease.

71. Gender. The use of any gender shall include all genders, and if there be more than one entity, then all words used in the singular shall extend to and include the plural.

72. Partial invalidity. If any term, provision, covenant, or condition of this Concession Lease should be held to be invalid, void, or unenforceable, the remainder of this

Concession Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

73. Time is of the essence. Time is of the essence in all provisions of this Concession Lease.

### **SPECIAL CONDITIONS**

74. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this Concession Lease upon giving reasonable notice and without compensation, except as otherwise provided in the Concession Lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Concessionaire is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value thereof shall be paid by Lessor based upon the unexpired term of the Concession Lease as it bears to the whole term.

75. Clearances. The Concessionaire shall be responsible for obtaining all necessary federal, state or county clearances.

76. Restriction on residential use. The premises, or any portion, shall not be utilized for residential purposes. The construction or placement of any structure on the premises for residential purposes is strictly prohibited.

77. [Intentionally omitted].

78. Abandoned vehicles. Concessionaire shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises. Any and all abandoned vehicles within the premises shall be removed by Concessionaire at Concessionaire's cost and expense.

79. Environmental regulations. Concessionaire shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to Chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

80. Removal of trash. The Concessionaire shall be responsible for the removal of all illegally dumped trash upon the premises within thirty (30) days from the date of execution of the Concession Lease and shall so notify the Lessor in writing at the end of thirty (30) days.

81. Definitions. As used herein, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources, State of Hawaii, or successor or authorized representative.

- (b) “Board” means the Board of Land and Natural Resources, State of Hawaii, or its authorized representative.
- (c) “Department” means the Department of Land and Natural Resources, State of Hawaii.
- (d) “Days” means calendar days, unless otherwise specified.
- (e) “Concessionaire” means and includes the concessionaire lessee identified herein, its heirs, executors, administrators, successors, and permitted assigns.
- (f) “Holder of record of security interest” means a person who is the owner or possessor of a security interest in the land.
- (g) “Waste” shall be deemed to include, but not be limited to, (1) permitting the premises or any portion thereof to become unduly eroded, or failure to take proper precautions or make reasonable effort to prevent or correct same; (2) permitting any material increase in noxious weeds in cultivated or uncultivated portions of the Premises; and (3) failure to employ all of the usable portions of the Premises.



IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month, and year first above written.

STATE OF HAWAII

By \_\_\_\_\_  
Chairperson and Member  
Board of Land and Natural Resources

LESSOR

\_\_\_\_\_  
\_\_\_\_\_

CONCESSIONAIRE

Approved by the Board  
of Land and Natural  
Resources at its meetings  
held on June 18, 2004, August 27, 2004,  
and November 19, 2004.  
\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

Dated: \_\_\_\_\_

STATE OF HAWAII )  
 ) SS.  
COUNTY )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared  
and \_\_\_\_\_, to me known to be the person(s) described in and who executed the  
foregoing instrument and acknowledged that \_\_\_\_\_ executed the same as \_\_\_\_\_ free act and  
deed.

\_\_\_\_\_  
Notary Public, State of  
Hawaii

My commission expires:

STATE OF HAWAII )  
 ) SS.  
COUNTY )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me appeared \_\_\_\_\_ and \_\_\_\_\_, to me personally  
known, who, being by me duly sworn, did say that they are the  
\_\_\_\_\_ and \_\_\_\_\_, respectively of \_\_\_\_\_, a Hawaii  
corporation, and that said instrument was signed in behalf of said corporation by authority of its  
Board of Directors, and the said \_\_\_\_\_ and \_\_\_\_\_ acknowledged said  
instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii

My commission expires:

STATE OF HAWAII

)

) SS.

COUNTY OF

)

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me personally appeared  
and \_\_\_\_\_, to me personally known,  
who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing  
instrument as the free act and deed of such person(s), and if applicable in the capacity shown,  
having been duly authorized to execute such instrument in such capacity.

Notary Public, State of Hawaii

\_\_\_\_\_

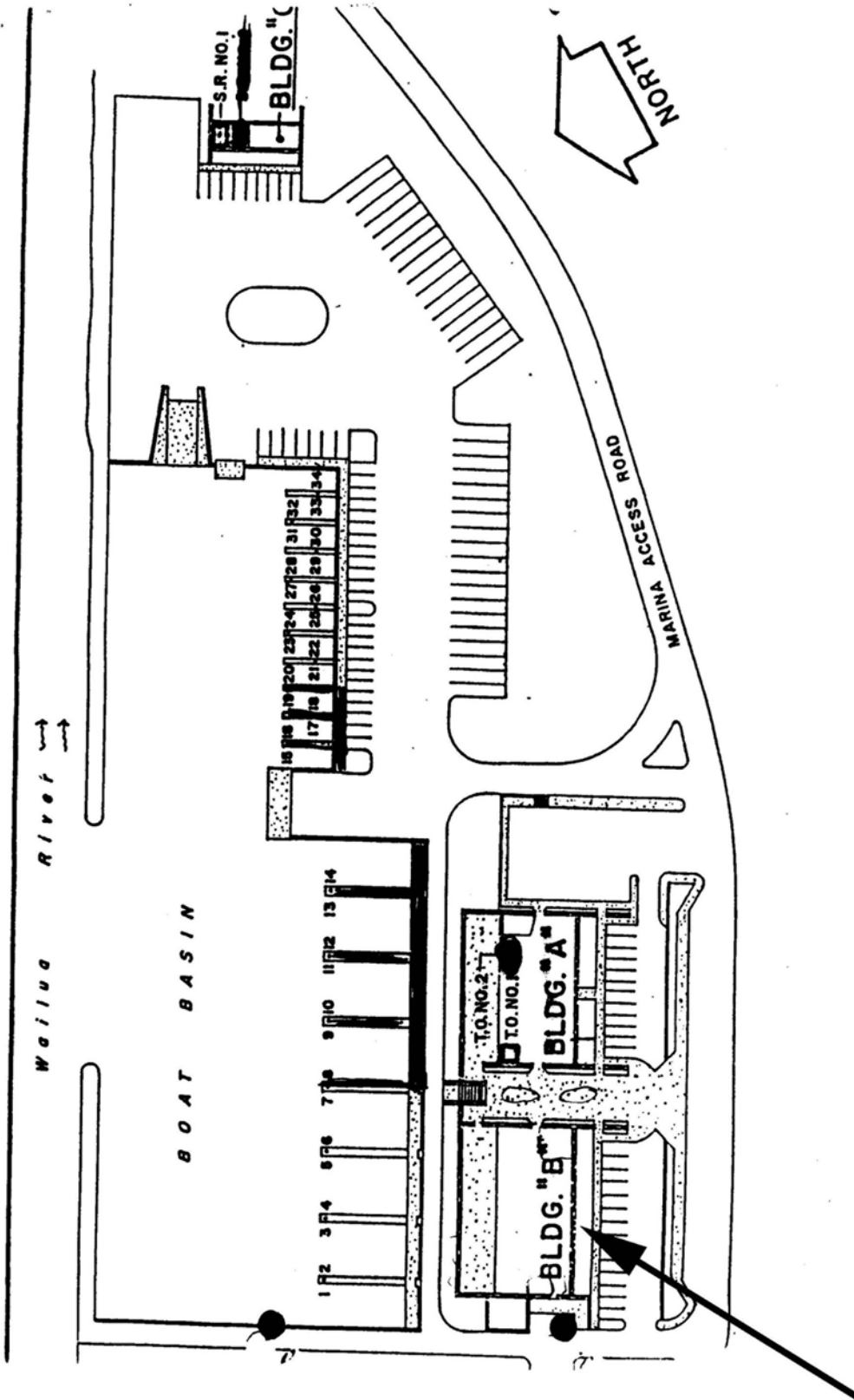
My commission expires:

## ATTACHMENT A

### CHARACTER OF USE

#### Facilities and Services Authorized

The use of this facility shall be a full service restaurant to be open and operate 365 days per year serving at a minimum, lunch and dinner every day. The Premises shall be used for no other purpose.



ATTACHMENT "A" - WAILUA MARINA RESTAURANT, BUILDING "B"

## ATTACHMENT B

### PREMISES

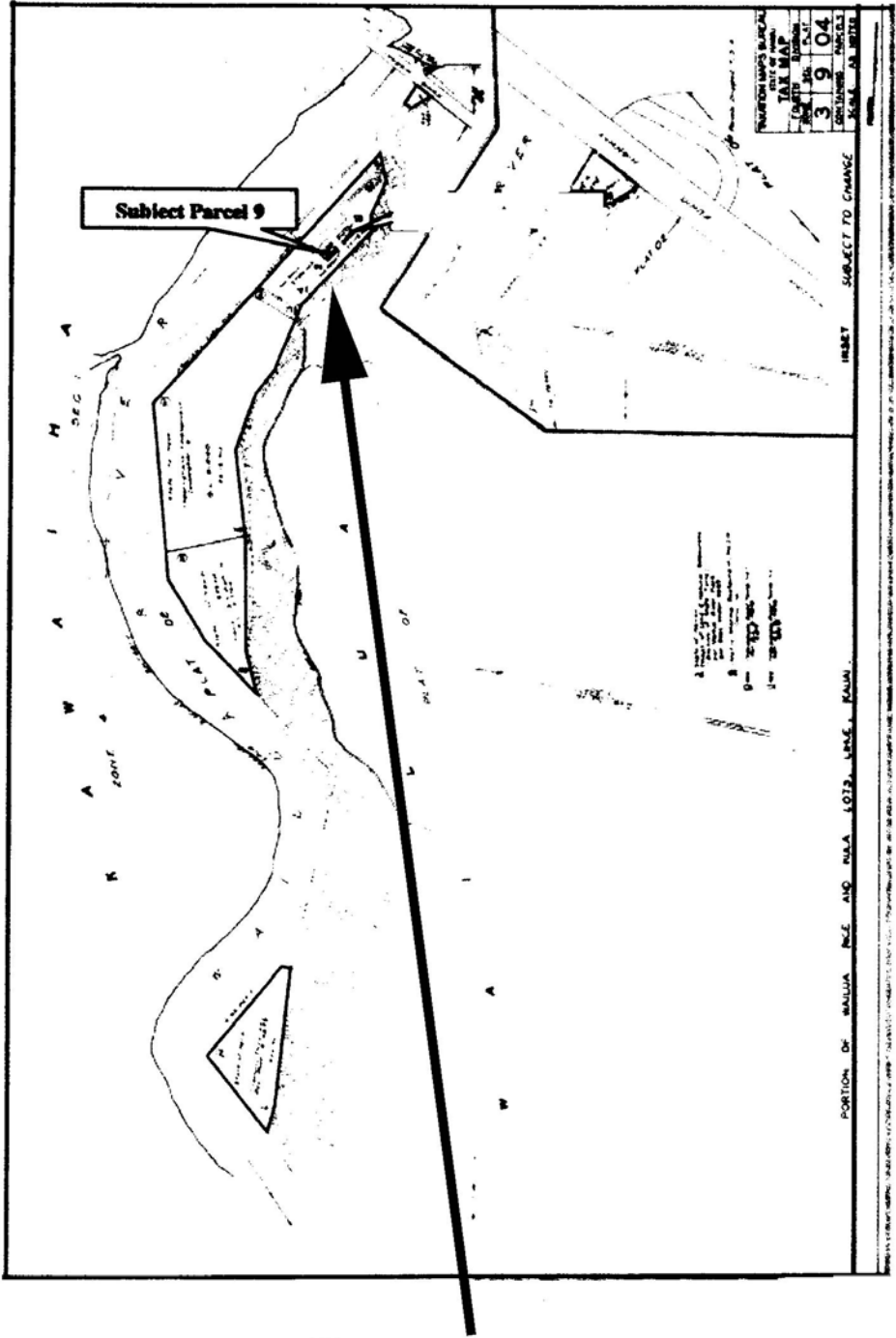
(Describe concession area, including square footage]

[List and describe existing improvements ]

[Attach map]

The Premises cover Tax Map Key (4)-3-9-004-009 an area of 9,437 square feet, land to include the building. The building improvements consist of a single tenant, one-story steel masonry and steel restaurant building of 5,832 square feet with an attached covered area of approximately 2,099 square feet.

**Plat Map**



**ATTACHMENT "B", WAILUA MARINA RESTAURANT**

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# WAILUA MARINA RESTAURANT

## SURETY BID BOND

Bond No. \_\_\_\_\_

### KNOW TO ALL BY THESE PRESENTS:

That we, \_\_\_\_\_ ,  
(Full name or legal title of Offeror)  
as Offeror, hereinafter called Principal, and \_\_\_\_\_ ,  
(Name of bonding company)  
as Surety, hereinafter called Surety, a corporation authorized to transact business as a  
Surety in the State of Hawaii, are held and firmly bound unto the Administrator,  
State Parks Division Office, Department of Land & Natural Resources, State of Hawaii  
(State/county entity)  
as Owner, hereinafter called Owner, in the penal sum of \_\_\_\_\_

Dollars (\$ \_\_\_\_\_), lawful money of the United States of America, for the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

### WHEREAS:

The Principal has submitted an offer for a full service restaurant at Wailua Marina River State Park, Kauai, to Board of Land and Natural Resources, State of Hawaii  
(Project by number and brief description)

### NOW, THEREFORE:

The condition of this obligation is such that if the Owner shall reject said offer, or in the alternate, accept the offer of the Principal and the Principal shall enter into a Contract with the Owner in accordance with the terms of such offer, and give such bond or bonds as may be specified in the solicitation or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the

prosecution thereof as specified in the solicitation then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal)

\_\_\_\_\_  
Name of Principal (Offeror)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

# WAILUA MARINA RESTAURANT

## PERFORMANCE BOND

(11/17/98)

### KNOW TO ALL BY THESE PRESENTS:

That we, \_\_\_\_\_,  
(full legal name and street address of Concessionaire)

as Concessionaire, hereinafter called Concessionaire, is held and firmly bound unto the

\_\_\_\_\_, its successors and assigns, as Oblige, hereinafter called  
(State/County entity)

Oblige, in the amount of \_\_\_\_\_

\_\_\_\_\_  
(Dollar amount of contract)

DOLLARS (\$\_\_\_\_\_), lawful money of the United States of America, for the payment of which to the said Oblige, well and truly to be made, Concessionaire binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

1. Legal tender;
2. Share Certificate unconditionally assigned to or made payable at sight to

\_\_\_\_\_  
Description \_\_\_\_\_;  
\_\_\_\_\_;

3. Certificate of Deposit, No. \_\_\_\_\_, dated \_\_\_\_\_, issued by \_\_\_\_\_,  
drawn on \_\_\_\_\_,  
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to \_\_\_\_\_

4. Cashier's Check No. \_\_\_\_\_, dated \_\_\_\_\_, issued by \_\_\_\_\_

drawn on \_\_\_\_\_ ,  
a bank, savings institution or credit union insured by the Federal Deposit  
Insurance Corporation or the National Credit Union Administration, payable at  
sight or unconditionally assigned to \_\_\_\_\_

\_\_\_\_\_ ;

5. Teller's Check No. \_\_\_\_\_ , dated \_\_\_\_\_ , issued by

\_\_\_\_\_ ,

drawn on \_\_\_\_\_ ,  
a bank, savings institution or credit union insured by the Federal Deposit  
Insurance Corporation or the National Credit Union Administration, payable at  
sight or unconditionally assigned to \_\_\_\_\_

\_\_\_\_\_

6. Treasurer's Check No. \_\_\_\_\_ , dated \_\_\_\_\_ , issued by

\_\_\_\_\_ ,

drawn on \_\_\_\_\_ ,  
a bank, savings institution or credit union insured by the Federal Deposit  
Insurance Corporation or the National Credit Union Administration, payable at  
sight or unconditionally assigned to \_\_\_\_\_

\_\_\_\_\_

7. Official Check No. \_\_\_\_\_ , dated \_\_\_\_\_ , issued by

\_\_\_\_\_ ,

drawn on \_\_\_\_\_ ,  
a bank, savings institution or credit union insured by the Federal Deposit  
Insurance Corporation or the National Credit Union Administration, payable at  
sight or unconditionally assigned to \_\_\_\_\_

\_\_\_\_\_

8. Certified Check No. \_\_\_\_\_ , dated \_\_\_\_\_ , accepted by a bank,  
savings institution or credit union insured by the Federal Deposit Insurance  
Corporation or the National Credit Union Administration, payable at sight or  
unconditionally assigned to \_\_\_\_\_

\_\_\_\_\_

#### WHEREAS:

The Concessionaire has by written agreement dated \_\_\_\_\_ entered into a  
contract with Oblige for the following Project: \_\_\_\_\_

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hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

**NOW, THEREFORE,**

The condition of this obligation is such that, if Concessionaire shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Concessionaire or its agents or servants or the improper performance of the Contract by the Concessionaire or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

**AND IT IS HEREBY STIPULATED AND AGREED** that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Seal) \_\_\_\_\_  
Name of Concessionaire

\* \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**\*ALL SIGNATURES MUST BE ACKNOWLEDGED  
BY A NOTARY PUBLIC**

PERFORMANCE SURETY BOND  
FOR THE  
WAILUA MARINA RESTAURANT CONCESSION AT WAILUA RIVER STATE PARK  
KAPAA, KAUAI, HAWAII

KNOW ALL MEN BY THESE PRESENT; That the undersigned,

\_\_\_\_\_ as principal, and

\_\_\_\_\_ as surety, hereby acknowledge

and recognize ourselves held and firmly bound to the Board of Land and Natural Resources

("BOARD"), its successors and assigns, as obligee in the sum of

\_\_\_\_\_ lawful money of the

United States of America, for the payment of which sum well and truly to be made we bind

ourselves, our heirs, legal representatives, successors and assigns, as the case may be, jointly

and severally, firmly by these presents.

The condition of this obligation is that whereas the principal has entered into contract with the obligee to operate a RESTAURANT at Wailua Marina River State Park, Island of Kauai, Hawaii, for the period commencing on the date designated by the BOARD in its "Notice to Proceed" for the term of the concession lease, and the Contract provides for the payment of rents by the principal to the obligee, and the compliance by the principal with the terms, provisions, conditions, covenants and agreements as therein provided, the original copy of the Contract is on file in the office of the obligee.

NOW, THEREFORE, IF THE PRINCIPAL;

1. Shall well and faithfully observe, fulfill, and perform each and every term, condition, or obligation contained in the Contract and any amendments thereto and on the part of the principal to be observed, fulfilled, and performed (it being understood that the surety hereby waives notice of any and all amendments to the Contract); and

2. Shall pay, as they shall be due, all just claims of the obligee under the Contract and for enforcing the terms of the Contract if action is brought thereon (including reasonable attorneys' fees in any case where this action is successfully maintained), and for compliance with the laws appertaining thereto; THEN THIS OBLIGATION SHALL BE VOID, but otherwise it shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed these presents this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Concessionaire (Principal)

By: \_\_\_\_\_  
Authorized Signature

Title \_\_\_\_\_

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
Authorized Signature

Title \_\_\_\_\_

(Notarial Acknowledgments)